19 5 / K

File No. S. Dh'war 6/51

Examined

Legal DEPARTMENT

E BRANCH

Subject:— Suits: Dharwar.

In the Court of the Civil Judge (S.D.), Hubli.

Civil Suit No. 173 of 1950.

Gurupadayya Barayya Hiremath — Plff.

Vs.

The State of Bombay — Defd.

File No. S. Dh'war 6/51.

Std. Sectt. Slip 24-B

C O N T E N T S.

Legal Department File No. J.Dwr. 6/51.

No.	R.I./O.No.	Subject	Pages.

Suits Dharwar.

In the Court of the Civil Judge (S.D.)
Hubli

C.S.No. 173 of 1950.

G. B. Hiremath

v/s

The State of Bombay.

For declaration of ownership to the plaint property and for possession thereof.

1-54.

L. C. Suit No. 13 of 1950

Plaint

In the Court of the Civil Judge, Senior Division, at Hubli.

Plaintiff:- Gurupadayya adopted son of Basayya Hiremath, Lingayat, Agriculture, age about 40 years of Budarsingi, Taluka Hubli..

Vs.

Defendants:-1. The Province of Bombay.

2. Gadigeyya Gangayya Hiremath, age about 49, Agriculture of Budarsingi, now residing at Kotgondhunshi, Taluka Hubli.

3. Channayya Gangayya Hiremath, Lingayat, Agriculture, 36 years of Budarsingi, Taluka Hubli.

Claim Rs 22/4 for court fee.

Jurisdiction Rs1000/-

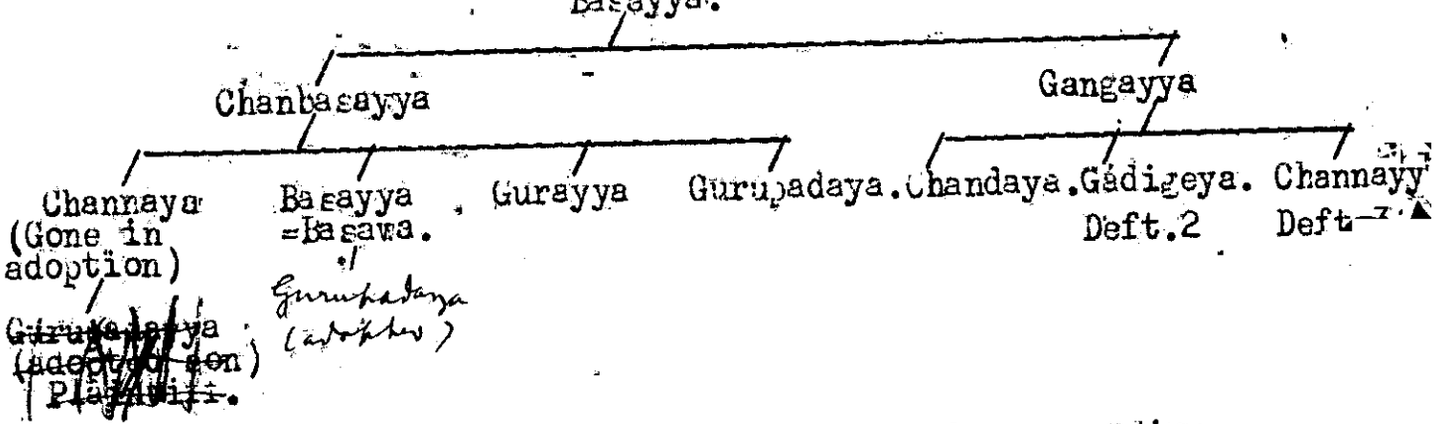
In this the plaintiff begs to submit as under :-

1. Land at Budarsingi entered in the present record of rights as R.S.No.24, 11 acres, 25 gunthas and formerly bearing field No. 27 and shown as measuring 11 acres 1 guntha and assessed at Rs 3/- is hereinafter referred to as the plaint property.

2. The plaint property along with another land belongs to and originally belonged to the family of plaintiff and defendants 2 and 3. The said lands have been held as private properties of the family since a long time. The British Government also recognised and issued a Sanad on or about 16-5-1868 in respect of the plaint and another land. Since then the members

of the family (plaintiff's and defts-2 and 3's branch) are holding the same as private property and in accordance with the terms and conditions of the Sanad. There have been successive lawful holders. Plaintiff is entitled to hold or possess the same as stated below.

3. The relevant genealogy of the family tracing the right, title and interest of the plaintiff in the family and in the plaint properties is as under :-



Plaintiff has been adopted by Basawa who has according to religious customs, taken plaintiff in adoption to her husband and has also passed an adoption deed. Except plaintiff and defendants 2 and 3 there is no other male-descendants. or heirs

4. The branches of Chanbasayya and Gangayya have been decided long since. About 5 acres of land lying to the north of blank land had been allotted to the plaintiff's branch and the rest was used as common of both the branches and used as a tank. The present dimensions of the tank has been formed out of the property of plaintiff and defendant's family.

5. Besides using the tank, for the family purposes the family allowed the neigrbouring landholders to take water from the tank on payment of , thrashed paddy and grows with paddy, approximately measuring 3 chittis of paddy (ಮೂರು ಚಿಟ್ಟು ಭತ್ತ)

6. This right of the respective parties has been recognised by the villages and is observed by some even to this day

7. Though this is and has been the state of things, the Government about 10 years back, and when the property was held by widow Basawa (plff's adoptive mother) has illegally dispossessed on or about 10-9-1938 and is now holding the same illegally.

8. It appears that the village officers with an ulterior motive falsely reported S. N. 24 (plaint land) was Government tank and consequently the Government on the strength of the orders of the revenue authorities has dispossessed the plaintiff's family. The orders of the revenue authorities, if any, are not binding on this plaintiff. Besides the orders are ultra vires.

9. The plaintiff by virtue of adoption as stated above, is entitled to the exclusive possession of 3 acres of cultivable land (lying to the north of the plaint land S.No. 24) and in any event to the joint possession of the [illegible] defendants 2 and 3.

10. Defendants 2 and 3 are added as parties due to the joint enjoyment of the tank and also because there should be no objection on the ground of their nonjoinder and facilitate all questions arising or that may arise in the suit.

11. The suit property having been situated within the jurisdiction of this court and the cause of action arisen within the jurisdiction of this court, the suit filed in this court is competent.

12. The cause of action has arisen on or about 16-9-1938 when the Government illegally dispossessed Basawa, and on or about 1-7-46 when plff was ousted.

12. The plaintiff has served defendant No. 1 with a legal and proper notice on or about 16-10-49 and the suit is filed after the expiry of the statutory period.

13. The suit being for possession it is valued for purposes of court fees at Rs

being 7½ times the amount of assessment ~~at times the difference~~. The suit for purposes jurisdiction and pleader's fees is value at

15. ~~Plaintiff prays~~ :

(a) for a declaration that plaintiff and defendants 2 and 3 are joint owners of the 8 acres of plaint land and plaintiff alone is entitled to be the owner in respect of the ~~other~~ 2 acres of land lying to the north (C.No. 24). and

(b) for an order directing for possession of the plaint land in accordance with the respective rights of plaintiff and defendants 2 and 3 as stated above.

(c) for future mesne profits at Rs 75 annually.

(d) for costs of suit and such other reliefs as the facts of the case

21-4-50

5 — X 0.1

L.No. 33 dated 29-3-1951.
Office of the Sub Government Pleader
Hubli. 29-3-1951.

L. D.
2 APR 1951

The Remembrancer of Legal Affairs,

Bombay.

Subject :- Filing of W.S. in L.C. suit No. 173 of 1950 of Hubli Court.

Sir,

I have to submit that the case is finally fixed for filing the W.S. on 21-4-1951. No more adjournments will be given in the case. Hence I request you to send the w.s. sanctioned before that dated.

Yours faithfully.

Sub Government pleader, Hubli.

6585
A-3-4-51

asked for information
reset date is 21-4-57 ons.
further adj is possible acc to this S.P.

3/4 A. Lobo Gr Offr.

3-4:

7

Dharwar Civil Suit No.173 of 1950.

--

1. This is a suit for a declaration of ownership to the plaint property and for possession thereof with mesne profits.

2. Original papers in the case have been destroyed, so says the Collector's report.

3. From the pleadings, the chronological statement and grounds of defence have been prepared.

4. The suit is defensible.

5. The defence of the same may be sanctioned on the lines of the accpmpanying brief.

6. The written statement in the case is despatched to the D.G.P.

2/4

Solicitor (M.L) Approved

21/4/51

L D.
25 APR 1951

REVENUE DEPARTMENT,
SECRETARIAT, BOMBAY.
24 APR 1951

* ✓ Secy. R.D. 24/4

* No. 6482 ✓

dt. 23-4-51

No. 6243

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 18th April 1951.

Subject: Dharwar Civil Suit No. 173 | 1950

MEMORANDUM.

The ~~District~~ Sub Government Pleader, Hubli.

is informed that the defence of the suit noted above is being sanctioned and he is requested to ~~conduct the same on the lines of the brief, a typed copy of which together with~~ file the attached written statement in Court. Two copies of the Written Statement are sent herewith in advance.

Papers of the case in received from the Collector accompany.

For Remembrancer of Legal Affairs.

To

The ~~District~~ Sub Government Pleader, Hubli

KML/4

Subsidy for Dig.

Dig
17/4

Advocate:—

17/4.

Issued
18/4

11 Exh 5

In the Court of the Civil Judge,

Senior Division at Hubli.

Civil Suit No. 173 of 1950.

Gurupadaya .... Plaintiff.

versus

The State of Bombay and others. .... Defendants.

The following is the written statement of defendant No.1 in this case :-

(1) This defendant denies the plaintiff's claim or any part of it. This defendant does not admit ~~if~~ any of the allegations of facts made by the plaintiff in the plaint.

(2) With respect to paragraph 2 of the plaint, this defendant denies the allegation that the suit property originally belonged to the plaintiff's family as their private property under a Sanad dated 16-5-1868. This defendant further denies the allegations that plaintiff and defendants 2 and 3 and their predecessors were or are the lawful holders of the suit property or they had or have a right to hold the same. The plaintiff is put to the strict proof of his title to the suit property.

(3) This defendant does not admit the geneology given by the plaintiff in paragraph 3 of the plaint. This defendant denies the factum and validity of the plaintiff's adoption. He is put to the strict proof of the geneology as well as his adoption.

(4) With reference to paragraph 4, 5 and 6 of the plaint, this defendant denies the plaintiff's or defendants' 2 and 3's ownership or possession over the tank either jointly or separately. This defendant does not admit the allegation that the plaintiff's family was allowing the neighbouring land-holders to take water from the tank on payment of paddy. There was no such right either with the villagers or with the Hiremath family.

(5) This defendant does not admit the allegations of Dispossession of the plaintiff's adoptive mother or

submission of false reports by the village officers, as contended by the plaintiff in paragraphs 7 and 8 of the plaint. This defendant is in rightful possession of the suit property.

(6) This defendant denies the plaintiff's right to joint or exclusive possession of the plaint property as alleged in paragraph 9 of the plaint.

(7) The plaintiff has no cause of action for this suit. He is not entitled to the joint or exclusive possession of the plaint property nor is he entitled jointly or exclusively to the water of the tank in S.No.24.

(8) The suit, as framed, militates against the provisions of sec.79, Civil Procedure Code as amended by the Adaptation of Indian Laws Order,1960. The suit is not tenable in its present form.

(9) The suit is barred by limitation.

(10) The suit is barred by the provisions of the Revenue Jurisdiction Act.

(11) The orders of the Revenue Authorities were perfectly valid, legal and intra vires.

(12) The plaintiff cannot claim possession of the suit property or any portion of it whether jointly or exclusively unless and until the orders of the Revenue Authorities are set aside.

(13) The plaintiff's claim for possession and mesne profits is not tenable in law.

For these reasons the suit fails and should be dismissed with costs.

District Government Pleader,

15 ~~17~~

I,.....,.....

Distridt Government Pleader,..... do hereby declare that what is stated in paragraphs 1 to 13 above is true according to the information received and believed to be true. This verification is made at..... on the..... day of.....195....

District Government Pleader,

17

No. 6680

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 26th April 1951.

Subject: Dharwar Civil Suit No. 173/1950

MEMORANDUM.

The ~~District~~ Sub Government Pleader, ~~Dharwar~~ Hubli is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which ~~together with two copies of the Written Statement~~ is sent herewith in advance.

Papers of the case in file one received from the Collector accompany.

For Remembrancer of Legal Affairs.

To

The ~~District~~ Sub. Government Pleader, ~~Dharwar~~ Hubli

KML/4

Submitted for sig.
26/4

Solicitor.
26-4.

Issued
26/4

Suits.

19 ~~135~~

Dharwar.

For declaration of ownership to the plaint property and for possession thereof.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7069.

Bombay Castle, 3rd May 1951.

Letter from the Collector of Dharwar, No. LAW 507, dated the 10th February 1951—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), HUBLI.

CIVIL SUIT No. 173 OF 1950.

Gurupadayya Barayya Hiremath ... Plaintiff:

versus

The State of Bombay ... Defendant.

Memorandum, to the sub-ordinate Government Pleader, Hubli, No. 6680, dated the 26th April 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

[*P.T.O.*

Original sent

L Leg H 20—1

Issued 25/6

To

The Revenue Department,
The Collector of Dharwar, } with a copy of the brief.
The Subordinate Government Pleader, Hubli (with two copies of the brief).

No. of 1951.

Copy forwarded for information and guidance to

Subdl. after cross
file in S. Dharwar /57 (Crew)
29/6/57

ASGH
lw/29/6.

21 XD7

DHARWAR CIVIL SUIT NO. 173 OF 1950.

Chronological Statement.

1. The plaintiff sues, in this case, for a declaration of joint ownership along with defendants 2 and 3, of eight acres and exclusive ownership of three acres of the plaint land Survey No. 24 and for possession thereof with mesne profit.

2. The plaintiff claims to be the adopted son of Basayya Chanbasayya, shown in the geneology in the plaint. Plaint land and another were held by the plaintiff's family, so the plaintiff alleges, since long under a sanad issued by the then Government in 1868. The plaint land consists of tank. It is, alleged by the plaintiff that plaintiff's family can distribute tank water to other villages on payment of certain paddy to them. The plaintiff's adoptive mother was illegally dispossessed of this land by Government in 1938 by an order of the Assistant Collector, III Division, Dharwar, and since then the tank was shown in Government papers as Government tank.

3. The Collector reports that the original papers in the case have been destroyed. This chronological statement is prepared from the pleadings.

4. On 12th November 1949, plaintiff gave notice of suit under section 80, Criminal Procedure Code and on 21st April 1950, he filed this suit in the Court of Civil Judge, Senior Division, Hubli.

Grounds of Defence.

1. *Frame of the suit.*—The suit is filed against the Province of Bombay. This description of the defendant is contrary to the provisions of section 79, C. P. C. as amended by the Adaptation of the Indian Laws Order, 1950. The suit is, therefore, not tenable unless suitably amended.

2. *Limitation.*—The order of the District Deputy Collector under which the plaint property was declared of Government ownership was passed on 16th September 1938. The plaint is filed on 21st April 1950. The plaintiff cannot claim possession unless this order is set aside. The order is legal, valid and *intra vires*. The suit is, therefore, barred under article 14 of the Limitation Act.

3. The order of the District Deputy Collector though appealable, was not appealed against by the plaintiff or by his predecessor-in-interest if any. The suit is therefor barred under the provisions of Bombay Revenue Jurisdiction Act.

4. The plaintiff has given geneology in the plaint. That geneology should be denied and the plaintiff should be put to the strict proof of the same. The plaintiff claims to be the adopted son of one Bassayya. This adoption should be specifically denied and the plaintiff should be put to the strict proof of the Factum and Validity of adoption.

5. All allegations of ownership and enjoyment of the plaint property be denied, calling on the plaintiff to prove the same strictly.

38/

6. It is alleged in the plaint that plaintiff's adoptive mother Basayya was illegally dispossessed of this property by the order of the District Deputy Collector dated 16th September 1938. A copy of the order is not in the file. From the extracts of Records of Right and alienation Register of plaint property it seems that it now stands in the name of Government. It is not clear whether the property Survey No. 24 originally belonged to the Hirenath family and later on in 1938 it was acquired by the Government and specially allotted for a tank. From the extract of the alienation register (V.F. IX) it seems that the plaint property and another land were originally personal Inam lands and in 1938, the land Survey No. 24 is resumed and shown as Government tank. The District Government Pleader is requested to obtain a copy of the order of the Deputy Collector and see whether it is a case of acquisition or resumption. On that basis it should be contended that the order passed by the District Deputy Collector is legal, valid and *intra vires*. After securing the copy the District Government Pleader may raise the necessary defences in the suit.

S. Thomas 1/11

W. 38/15

23 29.

Urgent. 157

Letter No. 17 dated 6-2-1952.
Office of the Sub Government
Pleader, Hubli.

To

The Remembrancer of Legal Affairs,

Bombay.

Subject :- Filing of an appeal in L.C.suit No. 173/50 of the Hubli Court.

Sir,

I have to submit as under :-

I am sending herewith a copy of the judgment and decree and my report along with all the case papers, pages 1 to 92 . If the report is approved, an appeal may be preferred in the case. I shall send the certified copies of judgment and decree to the District Government pleader as soon as they are ready. I have applied for the same and they are not ready as yet.

Yours faithfully

Sub Government pleader, Hubli.

RECEIVED 1952

Submitted through the Collector of Dharwar.

No. LAD-507
Dharwar 8/2-52

Fd. wcs. to the Remembrancer of Legal Affairs Bombay for according necessary sanction for preferring an appeal in the matter.

L. D.
2 FEB 1952

8/2.

For Collector

15/2

GOVERNMENT
LEGAL DEPARTMENT
File No. 13888
Sub No. 22/2/52
E

25 - 41

Report under Rule 131.

L.C. suit No. 173/1950

The plff's claim for possession and mesne profits has been decreed in his favour. On the factum and validity of adoption, the plff's evidence seems to be sufficient though not satisfactory. As for issues from 1 to 4 the learned Civil Judge S.D. had ~~xxxxxxxxx~~ based his ~~earnings~~ reasonings on the contents of the ~~sand~~ Sanad at- Ex. 42, the copy of which is at page 73 in the case papers. The findings of this Court on the above issues, that the suit property was the private property of the plff's family seems to be wrong. Moreover, the fact that the order of the Asst.Collector must have been passed on breach of one or the other conditions meantioned in the Sanad, has not been taken into consideration by ~~the~~ this Court. Of course the orders of the Asst Collector and the Mamlatdar have not been produced as they could not be traced. However there are the exatracts of R of R produced at Exs 4, 5, 39 and 40. The entries in these extracts clearly show that the suit land held by the ancestors of the plff's family was converted into Government tank by an order of the Assistant Collector in 1938. So without setting aside the order of the Assistant Collector, the plff cannot claim possession of the suit property in this suit. There is no rebuttal evidence to disprove the entries in the R of Rts.

As for issue No. 8, the application to amend the plaint at Ex. 41 was given at a very late stage after the arguments were heard on both the sides. However the amendment has been allowed by the Court even though objected to by me.

It seems that issues Nos. 7 and 9 being issues on law points, have been wrongly answered by this Court. Issue No. 7 ought to have been answered with reference to Art 14 of the Limitation Act and not article 142 i.e. the suit ought to have been brought within one year from the date of the Asst.Collector order of 1938, and not within 12 years of dispossession.

Similarly the issue No. 9 ought to have been answered with reference to sec. 11 of the Revenue Jurisdiction Act as the contention has been taken up in para 10 of the w.s. It is not necessary that section of the Act should be mentioned in the w.s. The reasoning that reliance is not placed on any particular section of the Act in the W.S. seems to be wrong. Since the law and the relevant section has been pointed out in the arguments, it is sufficient to hold the issue in favour of the deft.

So on the point of limitation and Revenue Jurisdiction Act, the issues Nos. 7 and 9 have been wrongly answered. On merits the plff may have got a good case, but on law points it seems that Government has got a strong case. Hence an appeal should be preferrdd in the case.

Hubli.
6-2-1952.

BRKulkarni
Sub Government pleader,
Hubli.

L.D
Pl see above report from Sub Govt Pleader Hubli in connection with the C.C. 173/50 decided against Govt. He recommends an appeal & the Collr agrees with the proposal
For orders.
25/2

H Lobo Sheerander who prepared the Brief may deal with this urgently.
25.2

27 -43

Received on :- 21-4-1950.

Registered on :- 22-6-1950.

Decided on :-. 24-1- 1952.

Duration :- one year, 7 months and 2 days.

IN THE COURT OF THE ~~X~~ CIVIL JUDGE~~/~~, SENIOR DIVISION

Pleaders.

At Hubli.

L.C. Civil Suit No. 173 of 1950.

Shri. B.R.Kulkarni. 1. Gurupadayya adopted son of Basayya Hiremath, Lingayat, agriculture, age about 40, of Budarsingi, Taluka Hubli.-..... Plaintiff.

Against.

Sh: B.R.Mathad. 1. The State of Bombay.

Exparte. 2. Gadigeyya Gangayya Hiremath, age 49, agric of Budarsingi now at Kotgondhunshi , Taluka Hubli.

Exparte. 3. Channayya Gangayya Hiremath, Lingayat, agric , 36, of Budarsingi, Taluka Hubli.

Claim Rs 22-8-0 for Court fee.

Jurisdiction Rs 1000/-.

The plff sues to declare that he and defts 2 and 3 are joint owners of 8 acres of suit land and to declare that the plff is alone entitled to be the owner in respect of the remaining 3 acres of land towards the north in S.No. 24 and to get possession of the suit land from deft No. 1 and to get costs and future mesne profits.

2. He states that the suit land is S.No. 24 of Budarsingi measuring 11 acres and 25 gunthas and formerly it was ~~fiixxx~~ field Ni. 27 and this land and another land

belonged originally to the family of plff and defts Nos. 2 and 3 as private properties of the family since a long time, and the British Government recognised that right and issued a sanad dated 16-5-1868 regarding the two lands. He states that since then the members of the family of the plff and defts 2 and 3 are holding the property as private property and according to the terms and conditions of the Sanad. He states that one Basayya had two sons, Chanabasayya and Gangayya, and Chanabasayya had four sons, Channayya, Basayya, Gurayya and Gurupadayya and Gangayya had three sons, viz., Chandayya, Gadagayya (deft No.2) and Channayya (Deft No.3) and that Gurayya, Gurupadayya, and Chandayya are dead; and that Chandayya has gone in adoption to another family; and that Basayya died and his widow Basavva took the plff in adoption, according to religious custom to her husband and she has executed a deed of adoption. He statesthat there was a division between two branches long ago and about 3 acres of land lying towards the north in S.No.24 was allotted to the branch of the plff. and the rest was used as common land of both the branches and was used as a tank. He states that the water of the tank was used by the two branches for their own purposes and they allowed the neighbouring owners to take water from the Tank on payment of some paddy and paddy hay and the paddy amounted to about 12 seers and this right of the two branches has been recognised by the villagers. He states that about 10 years ago deft No. 11 illegally dispossessed Basawa and defts Nos. 2 and 3 and it was on or about 16-9-1938 - He states that the village officers falsely reported S.No. 24 was Government Tank and consequently the Government on the strength of the orders of the Revenue Authorities has dispossessed the plff's family and the orders, if any, passed by the Revenue Authorities are ultra vires and they are not binding on the plff. He states that by virtue of the adoption he is entitled to the exclusive possession of about 3 acres of land lying towards the north and he and defts Nos. 2 and 3 are jointly entitled to the possession of the remaining property. He states that he served deft 1 with a notice on 16-11-1945 as required by law and he has thereafter filed the present suit.

29-45

3. Deft No. 1 states at Ex. 21 that he denies the plff's claim or any part of it and he does not admit any of the facts alleged in the plaint by the plff. He states that the suit property did not originally belong to the family of the plff as their private property under a sanad dated 16-5-1868. He states that the plff and defts Nos. 2 and 3 and their predecessors were not lawful holders of the suit property and they had no right to hold the same, and he does not admit the genealogy given by the plff in the plaint and he denies the factum and validity of the adoption alleged by the plff. He says that the plff and defts Nos. 2 and 3 are not the owners and they were never in possession of the tanl and it is not a fact that the plff's family was allowing the neighbourers to take water from the tank on payment of paddy. He states that it is not a fact that deft No. 1 dispossessed Basawwa and it is not a fact that there were false reports by village officers. He says that he is in rightful possession of the suit property and denies the right of the plff. He says that the suit is bad under Section 79 of the C.P.C. as amended by the Adaptation of Indian Law Order, 1950, and the suit is not tenable in its present form; and the suit is barred by limitation and the revenue jurisdiction Act and the orders passed by the Revenue Authorities were perfectly right and legal, and the plff is not entitled to any relief until the orders of the Revenue Authorities are set aside, and the suit be dismissed with costs.

4. Defts Nos. 2 and 3 are duly served. They are absent and the suit is proceeded exparte against them.

5. On these contentions, the following issues are raised at Ex. 22 :-

1. Does the plff prove that he and defendants 2 and 3 are owners of 8 acres of the suit land ?
2. Does he prove that he alone is the owner of 3 acres of land in suit situated towards the north ?
3. Are plffs and defts Nos. 2 and 3 entitled to possession of 8 acres of land ?

4. Is plff entitled to possession of 3 acres of land ?

5. What is due for past mesne profits and from whom and to whom ?

6. Does plff prove that he was taken in adoption by Basawwa to her husband ?

7. Is ~~this~~ the suit in time ?

8. Is the suit barred under Section 79 C.P.C. as amended by the Adaptation of Indian Laws Oder, 1950 ?

9. Is the suit barred under the Revenue Jurisdiction Act ?

10. What order ?

My findings are :-

1 :- Yes. 2 :- Yes. 3 :- Yes. 4 :- Yes.

5 :- Nothing 6 :- Yes. 7 :- Yes. 8 :- No.

9 No. No. 10 :- As given below.

Reasons.

6. Issue No. 8 :- The plff has described defendant No. 1 as the Province of Bombay. Section 79 of the Civil Procedure Code was amended in the year 1950 by which a suit by or against a State Government should be filed against the State. The word " State" is substituted for the word " Province". It is stated for defendant No. 1 and the suit is not filed against a proper perspn. The plff has given application Ex. 41 to ~~xxxxx~~ amend the plaint and it has been allowed. In Chitley's Civil Procedure Code 1951 Edition, Volume I, page 837, para 8, it is stated that where a suit was wrongly brought against an officer of Government, it was held that the plaint should be amended by substituting the correct name. I, therefore, find that the suit is not barred.

Issue No. 6 :- The statements of Gurupadayya Ex.29, Yallappa Ex.35, and Virabhadrappa Ex. 36, are recorded for the plff and no oral evidence is adduced for deft No. 1. The plff and his witnesses have states that Basava took the plff in adoption; and that the natural mother of plff gave him in adoption to Basawa. Basawa has executed a deed of adoption, Ex. 37, to the plff. Basava had two daughters and one of them was married to plff and after the marriage Basawa has taken the plff in adoption. They have states that Basawa asked Parvatewa to give son ~~n~~ to plff in adoption and Parwatewwa

gave plff in adoption. The details of the ceremony are stated by the persons examinad in the case. The deed of adoption is executed by Basawa and it is duly attested and registered. I, therefore, believe the evidence of the plff and ~~fin~~ find the issue in the affirmative.

Issue No. 5 :- The plff has not asked for any past mesne profits and, therefore, I find the issue in the negative.

Issues Nos. 1 to 4 :-

9. It is in evidence that one Basayya had two sons, Chanabasayya and Gangayya, and that Chanabasayya had four sons and one of them was given in adoption to another family and the three others are dead and Basawwa was the widow of one Basayya and she took the plff in adoption; and that Gangayya had three sons out of whom one is dead and the others are defts Nos. 2 and 3. There is a Sanad given to the family and it is Ex. 42 in the case. It is stated there that Basayya bin Gurubasayya Hiremath was given ~~filed~~ field Nos. 2 and 27 by the Sanad as Inam for life on 6-6-1864 and it is declared that the said lands shall be continued for ever by the British Government as the property property of the persons who shall for time to time be its lawful holders on the following conditions. That is to say that the said holders shall continue faithful subjects of the British Government and shall render to the same as settled and consolidated the tax. It is further stated that the lands will be continued for ever without increase of land tax over the said fixed amount and without objection or question on the part of the Government as to the rights, if any, of the lawful holders thereof whether such rights shall have accrued by inheritance, adoption, assignment, or otherwise, and the Sanad is dated 16-5-1868. From the Sanad it is clear that the two lands are privateproperties of the family, and that there were only two conditions attached, and they were that the family must remain faithful ~~x~~ to the Government and they must pay the tax mentioned in the sanad. Ex. 40 shows that the field No. 2 was re-numbered as S.No. 23 and filed No. 27 as S.No. 24. The Sanad was issued to Basayya and Ex. 40 shows the name of Chanabasayya bin Basayya Hiremath for the two lands in the year 1907. The lands are shown as Jat Inam, and after

the death of Chanabasayya the name of his eldest son Basayya was mentioned in the year 1908. 6 gunthas out of S.No. 23 were taken out of S.No. 23 and were added xx to S.No. 24 in the year 1919. Thereafter it is stated in Ex. 40 that the Assistant Collector of Dharwar passed an order No. 108, dated 15-8-1938, and the Mamlatdar's No. below that was 180, dated 16-9-1938 and by these orders, S.No. 24 was removed from the list of the Jat Inams, and was termed as Government Tank, and accordingly an entry was made to that effect on 25-9-1938. Exh. 38 shows that the land S.No. 24 was mentioned as Government Tank by the orders referred to above in Ex. 40 after removing the name of Basawwa kom Basayya and Gadagayya bin Gangayya, who were shown as joint owners of the S.No. , and it was further ordered that the words ' Inam tank' should be removed and in their place the words ' Government tank' should be substituted. There are Exhs. 4, 5 and 39 and they are extracts from Record of Rights regarding the survey No. 24.

10. It is stated for the plff that about 3 acres of land towards the north in S.No. 24 is cultivable land; and that it was allotted to his branch in the partition between the two branches, and the remaining land of about 8 acres was joint between the plff and defts Nos.2 and 3; and that there was a tank therein; and that the water of that tank was used by the family for the family lands; and that water of the tank was also given to some villagers who gave some paddy and some hay to the owners; and that this continued since a long time; and that the family has not effected any breach in the conditions attached to the Sanad. The sanad shows that the lands are private property of the family, and they are entitled to hold the same permanently and their obligation to Government is that they must pay the tax mentioned in the Sanad and they must be faithful to Government. It is not stated for deft 1 that any of these conditions are broken. It is stated that there was an order of the Assistant Collecyor in the year 1938 stating that the tank should be named as Government tank and not Inam tank; and that there was an endorsement of the Mamlatdar below that order to enter the tank as Government tank; and that thereafter S.No. 24 was mentioned as Government tank. No order of the Assistant Collector and no copy of

of the endorsement made by the Mamlatdar are produced in the case for the defendant No.1. It is not shown for the deft No.1 that the family effected any breach in the conditions mentioned in the Sanad. It is not shown that the family was not faithful to Government and that the family did not pay the taxes. If the family was not faithful, the Government could forfeit the land. If the taxes were not paid, the Government could also forfeit the land but it is not shown that these conditions were brpken by the family at any time. The Government had a right to enhance the assessment but that has not been the case here. Therefore, I find that the plff and defendants Nos. 2 and 3 are the owners of the 8 acres of land in suit in which there is a tank, and the plff alone is the owner of about 3 acres of land situated towards the north in S.No. 24; and I find issues Nos. 3 and 4 in the affirmative.

Issue No. 7

11. The extracts from the record of rights, Exs. 5,38, and 40, show that there was an order by the Assistant Collecyor Dharwar, dated 15-8-1938. There was the adoption of the plff on 1-7-1946. The suit is filed on 21-4-1950. Therefore it is seen that the suit is filed within 12 years from the date on which the Assistant Collector passed the order mentioned in Exs 5, 38 and 40. Therefore, I find that the suit is in time.

Issue No. 9 :-

12. It is stated for deft No. 1 that the suit is barred under the Revenue Jurisdiction Act. Reliance is not placed on any particular section of that Act in the written statement, Ex.21. At the hearing it is stated for deft No.1, that the family of the plff should have filed an appeal on the order of the Assistant Collector, dated 15-8-1938 and they should have exhausted all their remedies by way of appeal; and that they should have filed thes suit within one year from the date of the last order. It is not shown for defendant No.1 as to the reasons which led the Assistant Collecyor to pass the order. The order is clearly against the terms of the Sanad,

and, therefore, it is quite illegal and the Assistant Collector had no authority to pass the order. Therefore, I find that it was npt necessary for the family of the plff to file the suit within one year from the date of the order. Therefore, I find the issue in the negative.

Order.

The plff and defts Nos. 2 and 3 should recover possession from defendant No. 1 the land measuring about 8 acres of land in which there is a tank and the plaintiff should recover the remaining land in S.No. 24 situated towards the north of the tank from defendant No.1. The plff shall recover his costs from defendant No. 1 and defendant No. 1 shall bear his costs. An enquiry regarding mesne profits from date of suit till possession is obtained is ordered under Order XX, Rule 12, clause (c) of the Civil Procedure Code.

24-1-1952.

Sd. B.A.Chougle.
Civil Judge, Senior Division.

35 - 51

(Decree in Original Suit).

D e c r e e .

In the Court of the Civil Judge, Senior Division, Hubli.

Long Cause Civil Suit No.173 of 1950.Ex.44.

Plaintiff :- Gurupadayya adopted son of Basayya Hiremath, Lingayat, Agriculture, age about 40 years of Budarsingi, Taluka Hubli.

Vs.

Defendants :- 1. The State of Bombay.

2. Gadigeyya Gangayya Hiremath, age about 49, agriculture of Budarsingi, now residing at Kotgondhunshi, Taluka Hubli.

3. Channayya Gangayya Hiremath, Lingayat, Agriculture , 36 years of Budarsingi,Taluka Hubli.

Claim Rs. 22/8/0 for court fees.

Rs. 1,000/- for jurisdiction.

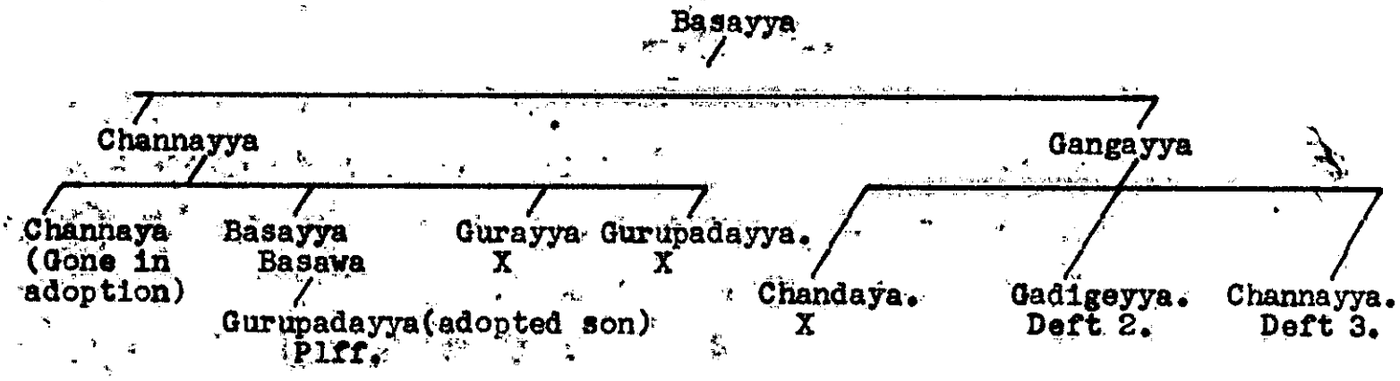
In this, the Plaintiff begs to submit as under : -

1. Land at Budarsingi entered in the present record of rights as R. S. No. 24, 11 acres, 25 gunthas and formerly bearing field No. 27 and shown as measuring 11 acres 1 guntha and assessed at Rs. 3/- is herein after referred to as the plaint property .

2. The plaint property along with another land belongs to and originally belonged to the family of plaintiff and defendants 2 and 3. The said lands have been held as private properties of the family since a long time. The British -.

Government also recognised and issued a Sanad on or about - 16-5-1868 in respect of the plaint and another land. Since then the members of the family (plaintiff's and defendants 2 and 3's branch) are holding the same as private property and in accordance with the terms and conditions of the Sanad . There have been successive lawful holders. Plaintiff is - entitled to hold or possess the same as stated below".

3. The relevant genealogy of the family tracing the right, title and interest of the plaintiff in the family and in the plaint properties is as under : -



Plaintiff has been adopted by Basawwa who has according to religious customs, taken plaintiff in adoption to her husband and has also - passed an adoption deed. Except plaintiff and defendants 2 and 3 there is no other male descendants or heirs .

4. The branches of Chanbasayya and Gangayya have been decided long since. About 3 xxxxx acres of land lying to the north of plaint land had been allotted to the plaintiff's branch and the rest was used as common of both the branches and used as a tank . The present dimensions of the tank has been formed out of the property of plaintiff and defendant's family.

5. Besides the tank for the family purposes the - family allowed the neighbouring landholders to take water from the tank on payment of thrashed paddy and grows with x paddy, approximately measuring 3 chittis of paddy ( ) .

6. This right of the respective parties has been - recognised by the villages and is observed by some even to this day .

7. Though this is and has been the state of things , the Government about 10 years back, and when the property was - held by widow Basawwa (plaintiff's adoptive mother) has illegally dispossessed on or about 16-9-1938 and is now holding the same - illegally.

37-52

8. It appears that the village officers with an ulterior motive falsely reported S. No. 24 (plaint land) was Government tank and consequently the Government on the strength of the orders of the revenue authorities has dispossessed the plaintiff's family. The orders of the revenue authorities, if any are not binding on this plaintiff . Besides the orders are - ultra vires.

9. The plaintiff by virtue of adoption as stated above, is entitled to the exclusive possession of plaint land of 3 acres of cultivable land (lying to the north of the plaint S. No. 24) and that in any event to the joint possession of the tank along with defendants 2 and 3 .

10. Defendants 2 and 3 are added as parties due to the joint enjoyment of the tank and also because there should be no objection on the ground of their non-joinder and facilitate all questions arising or that may arise in the suit .

11. The suit property having been situated within the jurisdiction of this court and the cause of action arisen within the jurisdiction of this court, the suit filed in this court is competent.

12. The cause of action has arisen on or about 16/9/1938 when the Government illegally dispossssed Basawwa and on or about 1-7-1946 when plaintiff was adopted .

13. The plaintiff has served defendant No. 1 with a legal and proper notice on or about 16-11-1949 and the suit is filed after the expiry of the statutory period .

14. The suit being for possession it was - valued for purposes of court fees at Rs. 22/8/0, being 7½ times the amount of assessment Rs. 3/-. The suit for purposes of - jurisdiction and pleader's fees is valued at Rs. 1000/-.

15. The Plaintiff prays : -

(a) For a declaration that plaintiff and defendants 2 and 3 are joint owners of the 8 acres of plaint land for a declaration that the plaintiff along is entitled to be the owner ~~xxx~~ in respect of the other 3 acres of land lying to the north (S. No. 24) and

(b) for an order directing for possession of the plaint land in accordance with the respective rights of plff and defendants 2 and 3 as stated above.

(c) for future mesne profits at Rs. 75/- annually.

(d) for costs of suit and such other reliefs as the facts of the case.

This suit coming on for hearing before Shri.B.A. Chougule, B. A., LL. B., Civil Judge, Senior Division, Hubli in the presence of Shri. B. R. Kulkarni, pleader for the plaintiff, and in the presence of Shri. B. R. Mathad pleader for the defendant No. 1, and in the absence of defendants 2 and 3, it is ordered :

The plaintiff and defendants Nos. 2 and 3 should recover possession from defendant No. 1 the land measuring about 8 acres of land in which there is a tank and the plaintiff should recover the remaining land in S. No. 24 situated towards the north of the tank from defendant No. 1. The plaintiff shall recover his costs from defendant No. 1 and defendant No. 1 shall bear his costs An enquiry regarding mesne profits from date of suit till possession as-obtained is ordered under Order XX, Rule 12, Clause (C) of the Civil Procedure Code.

Bill of Costs.

Plaintiff.		Defendant 1.	
1. Stamp for plaint Ex.1.	26/6/0.	1. Stamp for papers produced Exs. 11,12, 13,14,15,16,19,20,28, 38, 39 and 40.	Rs. 7/8/0.
2. Do. for power. Ex.2.	0/10/0.		
3. Do. for papers produced Exs. 23,24,26 and 41.	3/2/0.		
4. Pleader's fees on Rs.1000/-.	50/0/0.	2. Pleader's fees on Rs.1000/-.	50/0/0.
5. Takid Ex. 25.	3/12/0.		
6. Do for process fees. ex.1.	5/10/0.		
Total.	89/8/0.	Total.	57/8/0.
Costs disallowed.		Costs disallowed.	
Stamps for papers produced Exs. 23,24,26 and 41.	3/2/0.	Stamps for papers produced Exs. 11,12, 13,14,15,16,19,20,28.	5/10/0.
Balance Rs.	86/6/0.	Balance.	51/14/0.

39 55

Given under my hand and the Seal of the Court this 24th day of January 1952 .

Sd/-G.K.Renake.
Clerk.

Sd/- B. A. Chougule.
Civil Judge, S. Dn. Hubli.

31-1-52.

Plaintiff's pleader : Sd/- B. R. Kulkarni.
Pleader.

Defendant No. 1's pleader :- Sd/- B. R. Mathad.Pleader.
Sub-Govt.P.

Defendants 2 and 3 absent.

41 - 59

L.D.

Submitted.

1. The plff. claiming to be the adopted son of one Basawa the wd/o of Basayya - the holder of Sanad (Ex. 42) of in respect of the suit property, filed this suit No. 173/50 for exclusive possession of a portion and joint possession of the rest of the suit property with future mesne profits. The trial Court decreed the suit in favour of the plff. The Collr. of Dharwar has sent his report under the Law Officers' Rules requesting Govt's. sanction to file an appeal in the case. The Sub-Govt. Pleader opines that an appeal may be filed on grounds of Law.

2. On going through the judgment, it will be clear that plff has a good case on merits. There are only two questions of Law involved in the case Viz. (1) Bar of Article 14, Schedule 1 to the Indian Limitation Act, (2) Bar of sec. 11 of the Revenue Jurisdiction Act.

3. Govt's. claim to the suit property rested solely on the order dated 15-8-38 passed by the Assit: Collr., Dharwar. The order in question was not produced in the Court. It was reported that case papers pertaining to the order have been destroyed. Reliance was, therefore, placed on the secondary evidence, i.e., entries in the Record of Rights, Extracts and the alienation Register Extracts, relating to this property. It could not be ascertained from these entries, as to provisions of Law under which this order dt/ 15-8-38 might have been passed. The trial Court has come to the conclusion that the order dt/ 15-8-38 is illegal and ultravires. There is no material on record to dispute this conclusion. In view of this finding, article 14 of the Limitation Act would have no application. The suit will be governed by article 142, as the suit was filed on 21-4-50, it was in time. So the Bar of Limitation goes away.

4. As regards the Bar of Sec. 11 of the Bombay Revenue Jurisdiction Act, the same reasoning will apply. If the order

dt/ 15-8-38 was illegal and ultra vires, there was no obligation on part of the plff to go in appeal against that order before this suit was filed. It is therefore, submitted that this is a rather doubtful case for appeal.

Dr J
11/3

Application (Mit)

The P/f's suit was for a declaration that he is the exclusive owner of 3 acres of the Suit-land S. No. 24, & a joint owner, with defts. No. 2 & 3, of eight acres of that land. Facts of the case are at Slip A. The trial Court has held the P/f's title to the Suit-land as ~~alleged~~ proved, & has passed a decree in the P/f's favour. Joint had taken possession of the Suit-property under an order dated 15-8-38. But that order is not now forthcoming from joint. Records could not therefore be produced in Court. I therefore agree with the above view that it would not be possible to successfully challenge the trial Court's finding that the Suit is in time & that it is not barred under the Revenue Jurisdiction Act. Hence no useful purpose would be served by filing

an appeal in this case. Result may therefore be considered in

In

1-3.

Add: Long Page. Defendants on all 14 of the Remainder Class and 11 of the Remainder Class on about week defendants and should not be upset unless the case is found on merits

J 3/3

45 - 63

No. 3599.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 14 March 1950.

To

The Collector of Dharwar.

Subject:- Filing of appeal in L.C.Suit No.177/50 of the Hubli Court.

Sir,

With reference to your letter No. L.A.V. 507, dated the 23rd February 1950, on the above subject, I have the honour to state that Government have decided not to file an appeal against the decree in the above noted suit.

Yours faithfully,

for Remembrancer of Legal Affairs.

5.3.

To

The Sub-Government Pleader, Hubli.

The District Government Pleader, Dharwar.

LCP.

Enclosures

Newspapers may be filed

in S/Director 6/51

PRG

13/3

Application (PRG)

13-3.

G/57

47-65

Immediate
Please.

No. 186 dated 6 March '52,
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Sub :- L.C.Suit No.173 of 1950 - Hubli (Dharwar).

Ref :- R.L.A's Memo No.6680 of 1951.

Sir,

We filed today an appeal in the District Court of Dharwar, from a decree of the Hubli Civil Judge, S.D., dated 24-1-1952 awarding possession of suit property namely, Government tank in R.S.No.24 of Budersingi, in Hubli Taluka. As the period for filing the appeal expires tomorrow we had to file the appeal in anticiptaion of Goverment sanction the appeal has been filed on a ten annas court fee stamp. Ten days time has been granted for paying the deficit Court fee stamp. A copy of the appeal memo is herewith attached. If approved, necessary sanction for prosecuting the appeal and incurring necessary expenditure may be accorded, immediately.

Sagri Clerk

Yours faithfully,

B. a. Mahesh for

Dist. Govt. Pleader.

4965
E/11-3-52

L.D.

Pl. See the letter overleaf.
The D.P. writes that
he has filed an appeal
in Dharwar & no 173/58
on an insufficient stamp.
He requested for permission
We have already informed
him not to file an appeal.
It seems that the two letters crossed
The D.P. may be informed
accordingly of the final decision.
not to file an appeal in this case

19/7 Solicitor (Asst.) 19.7.

47 -67

Civil Appeal No. of 1952.

In the Court of the District Judge, Dharwar.

At Dharwar.

Appellant :- (original deft. No.1) The State of Bombay.

Versus.

Respondents :- 1. Gurupadayya adopted son of Basayya Hiremath, of Budersingi, Taluka Hubli ..... (Or. plaintiff).

2. Gadigeyya Gangayya Hiremath, of Budersingi, now at Kotgondhunshi, Taluka Hubli .... (Or. deft. No.2).

3. Channayya Gangayya Hiremath, of Bundersinghi, Taluka Hubli. (Or deft 3

Claim Rs. 22-8-0 for Court fee and " 1000-0-0 for jurisdiction.

The appellant herein named being aggrived by the judgment and decree dated 24-1-1952, of the learned Civil Judge, Senior Division, Hubli, in Long Cause Civil Suit No.173 of 1950, of that Court, begs to appeal from the same and sets forth the following grounds of contentions in support of his appeal. -

1. The judgment and decree of the lower Court are contrary to law and th weight of evidence in the case.

2. The lower Court ought to have dismissed the plaintiff's suit with costs. It erred in

decreeing the same.

3. The lower Court was wrong in believing the plaintiff and his evidence. It ought to have rejected their testimony.

4. The lower Court has approached the trial of the case from a completely wrong angle.

5. The lower Court ught to have held that the suit was completely vitiated on account of the amended provisions of section 79 of the C.P.C.

6 The lower Court ought to have held that the suit was barred by the provisions of section 11 of the Revenue Jurisdiction Act.

7. The lower Court ought to have held that the suit was barred by Article 14 of the Limitation Act as it was not instituted in one year after the order of Assistant Collector.

8. The lower Court was wrong in thinking that the order was invalid and did not need to be set aside.

9. The lower Court was wrong in adversely commenting upon the ~~ax~~ appellant for not producing the order of the Assistant Collector and the endorsement of the Mamlatdar. These can be sufficiently found out from the record of right extracts produced in the case.

10. The lower Court was wrong in holding that the adoption of the plaintiff was proved and that he had a right to bring the present suit.

11. The lower Court was wrong in holding that the

geneology was proved and that the plaintiff has established his descent from the original holder of the land so as to entitle him to claim the land. The suit of the plaintiff deserves to be dismissed on that ground alone.

12. The lower Court ought to have held that the appellant had adversely possessed the suit tank site for more than the statutory periodand had the eby become the owner of it.

13. The lower Court ought to have held that the plaintiff never exercised any rights over the tank and all that he did is referable to his character as an ordinary member of the public.

14. The Lower Court ought to have held that the plaintiff or anybody else never levied any fee from the members of the public for use of the tank water and that he was not entitled to levy it. No evidence has been led to prove this allegation made on behalf of the plaintiff, and no finding has been given.

15. The lower Court ought to have held that the order of the Assistant Collector only gave formal recognition to what was always the fact, namely, the acquisition of proprietary title by defendantNo.1 over the tank xxx by operation of adverse possession.

16. The notice given by the plaintiff is not legal, and proper.

17. The suit is badly constituted as defendants

Nos. 2 and 3 alleged to possess a joint right with the plaintiff have not joined at any time as plaintiffs in the suit to claim the right.

18. Inferences are not correctly drawn and the weight of evidence is not properly appreciated.

19. The appeal is filed on a ~~12k~~ ten annas Court fee stamp as the time for filing the appeal is about to expire and the necessary expenses have not been arranged for.

On these among other grounds that may be taken up with the permission of the Court at the hearing of the appeal the appellant prays that the appeal be allowed and the suit dismissed with costs throughout.

Drafted and Presented
By

Dharwar.
6th March '52.

District Govt. Pleader.

No. 4464 - S371
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 11th March 1952.

Subject :- Dharwar Civil Suit No. 173/51.

Memorandum:

With reference to his letter No. 186 dated 6th March 1952, the attention of the District Government Pleader Dharwar is invited to this office Memorandum No. 3599, dated 5th March 1952. The Government have decided not to file an appeal against the decree in the above noted suit.

2. Papers in one file received from the Sub Government Pleader, Hubli, accompany.

for Remembrancer of Legal Affairs.

The District Government Pleader,
Dharwar.

ISP/24/3

77 S.Y.-

Subdivisional Officer

Thiruchuli may be
Dharmapuri
filed in S/6/51

Orig
27/3

Asstt. Collector (Prob.)
27.3.

SDO in 6/51
28.3.52